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IN THE

Supreme Court of the United States

RICKY HENSON, IAN MATTHEW GLOVER, KAREN PACOULOUTE, F/K/A KAREN WELCOME KUTEYI, AND PAULETTE HOUSE,

Petitioners,

v.

SANTANDER CONSUMER USA, INC., COMMERCIAL RECOVERY SYSTEMS, INC., AND NCB MANAGEMENT SERVICES, INC.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR JEROME N. FRANK LEGAL SERVICES ORGANIZATION AT YALE LAW SCHOOL, EAST BAY COMMUNITY LAW CENTER, AND ECONOMIC JUSTICE PROJECT OF NOTRE DAME CLINICAL LAW CENTER AS *AMICI CURIAE* SUPPORTING PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii
INTEREST OF *AMICI CURIAE* 1
SUMMARY OF ARGUMENT 3
ARGUMENT 5
I. The Fourth Circuit's Interpretation Undermines The FDCPA's Purpose By Exempting A Class Of Debt Buyers Long Understood To Be Covered By The Act And By Creating A Blueprint For Additional Debt Buyers To Evade The Act 5
A. The Fourth Circuit's interpretation exempts from FDCPA coverage debt buyers that have consistently been held accountable for abusive collection behaviors 7
B. The Fourth Circuit's interpretation gives "principal purpose" debt buyers—who regularly engage in abusive practices—an incentive to evade the FDCPA through strategic diversification. 14
C. The Fourth Circuit's interpretation also provides incentives to debt servicers to evade FDCPA coverage by purchasing the debt they service, as Santander did here. 20
II. The Federal Government Has Long Interpreted The FDCPA To Apply To Purchasers Of Defaulted Debt. 21
CONCLUSION 36

TABLE OF AUTHORITIES

Cases **Page(s)**

Barany-Snyder v. Weiner, 539 F.3d 327 (6th Cir. 2008) 5

Barnhart v. Walton, 535 U.S. 212 (2002)..... 23, 31, 33

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Bridge v. Ocwen Fed. Bank, FSB, 681 F.3d 355 (6th Cir. 2012) 20, 22

Buchanan v. Northland Grp., Inc., 776 F.3d 393 (6th Cir. 2015) 22

Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984)..... 23

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Fed. Election Comm'n v. Democratic Senatorial Campaign Comm., 454 U.S. 27 (1981) 28

Fed. Exp. Corp. v. Holowecki, 552 U.S. 389 (2008) 31

Fed. Trade Comm'n v. Check Investors, Inc., 502 F.3d 159 (3d Cir. 2007)..... 16

Fed. Trade Comm'n v. Colgate-Palmolive Co., 380 U.S. 374 (1965) 22

Order for Permanent Inj. and Monetary J., *Fed. Trade Comm'n v. Green Tree Servicing LLC*, No. 0:15-cv-02064 (D. Minn. Apr. 23, 2015) 16

Goodin v. Bank of America, N.A., 114 F. Supp. 3d 1197 11

Hoehn v. FCC Finance, LLC, 126 F. Supp. 3d 472 (D.N.J. 2015) 12

Kasten v. Saint-Gobain Performance Plastics Corp., 563 U.S. 1 (2011) 23, 24, 31

Kimber v. Fed. Fin. Corp., 668 F. Supp. 1480 (M.D. Ala. 1987)..... 25, 29

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Nelson v. Santander Consumer USA, Inc., 931 F. Supp. 2d 919 (W.D. Wis. 2013), *vacated on joint motion and stipulation*, 2013 WL 5377280 (W.D. Wis. June 7, 2013) 11

Schlegel v. Wells Fargo Bank, N.A., 720 F.3d 1204 (9th Cir. 2013) 12, 13

Schlosser v. Fairbanks Capital Corp., 323 F.3d 534 (7th Cir. 2003) 29

Serna v. Law Office of Joseph Onwuteaka, P.C., 732 F.3d 440 (5th Cir. 2013)..... 7

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Tcherepnin v. Knight, 389 U.S. 332 (1967)..... 7

United States v. Mead Corp., 533 U.S. 218 (2001) ..... *passim*

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Mem. in Support of Pl.'s *Ex Parte* Appl. for TRO, *Fed. Trade Comm'n v. Asset & Capital Mgmt. Grp.*, No. 13-cv-5267 (C.D. Cal. July 23, 2013) 17

Second Am. Compl., *Fed. Trade Comm'n v. Capital City Mortg. Corp.*, No. 1:98-cv-237 (D.D.C. Apr. 17, 2002) 21

Compl., *Fed. Trade Comm'n v. EMC Mortg. Corp.*, No. 08-cv-338 (E.D. Tex. Sept. 9, 2008) 8

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Compl., *Fed. Trade Comm'n v. Green Tree Servicing LLC*, No. 0:15-cv-02064 (D. Minn. Apr. 21, 2015) 15, 21

Compl., *United States v. Consumer Portfolio Servs., Inc.*, No. 14-cv-819 (C.D. Cal. May 28, 2014) 9

Statutes

Fair Debt Collection Practices Act

15 U.S.C. § 1692 ..... *passim*

15 U.S.C. § 1692a ..... *passim*

15 U.S.C. § 1692e 12

15 U.S.C. § 1692f 12

15 U.S.C. § 1692*l* 22, 33, 34

15 U.S.C. § 1692m 22, 34

Dodd-Frank Wall Street Reform and Consumer Protection Act

12 U.S.C. § 5491 34

Pub. L. No. 111-203, 124 Stat. 1376 (2010) 33

Legislative History

S. Rep. No. 95-382 (1977) 10, 19, 27

S. Rep. No. 111-176 (2010) 33

Administrative Materials

12 C.F.R. § 1090.105 27

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INTEREST OF *AMICI CURIAE*

The **Jerome N. Frank Legal Services Organization at the Yale Law School** ("LSO") is a legal clinic in which law students, supervised by faculty attorneys, provide legal assistance to individuals who cannot afford private counsel. The Mortgage Foreclosure Litigation Clinic (the "Clinic"), part of LSO, has been representing homeowners fighting foreclosure in Connecticut since 2008. Many of the Clinic's clients face unscrupulous debt collection practices from mortgage servicers and debt collectors during the foreclosure process; large, diversified consumer finance companies are responsible for much of this misconduct. The Clinic has appeared in state and federal court proceedings at both the trial and appellate levels and filed amicus briefs with this Court and the United States Court of Appeals for the Second Circuit, as well as with appellate courts in Connecticut, Florida, North Carolina, California, and Maine. The students of the Clinic are among the authors of this brief.[1]

The **East Bay Community Law Center** ("EBCLC") is the UC Berkeley School of Law's community-based teaching clinic and a nationally recognized provider of legal services to low-income residents of the San Francisco Bay Area. EBCLC's Consumer Justice Clinic—whose students are among the

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* and their counsel made a monetary contribution to its preparation or submission. The parties' letters consenting to the filing of *amicus* briefs in support of either party have been filed with the Clerk.

authors of this brief—operates a legal clinic that reaches thousands of East Bay residents annually, including hundreds who seek legal help because they are facing debt collection lawsuits. Many of these consumers are victims of illegal actions under the FDCPA, and the great majority of the violations are committed by debt buyers, including diversified businesses that occasionally purchase portfolios of debt in order to collect them. Exempting such part-time debt buyers from the FDCPA would effectively condone abusive behavior that is otherwise prohibited by federal law.

The **Economic Justice Project of Notre Dame Clinical Law Center** ("EJP") represents low and moderate income clients in disputes with debt collectors. In addition, the EJP works regularly with local charitable organizations assisting their clients in financial literacy. As part of that work, the EJP advises and educates consumers on debt collection issues. The broad applicability of the Fair Debt Collection Practices Act is essential to the clients and consumers whom the EJP serves.

SUMMARY OF ARGUMENT

The Fair Debt Collection Practices Act ("FDCPA") regulates the collection of consumer debts "to eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692(e). A "debt collector" is defined, in relevant part, to be "any person * * * the principal purpose of [whose business] is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." *Id.* § 1692a(6). As Petitioners note, the phrase "owed or due another" is ambiguous: it could refer to the time of origination or the time of collection. Pet'rs' Br. 19. But, in light of the statute's structure and purpose, the better reading is that debt is "owed" the originator. *See id.* at 19-21.

This reading of the Act is further supported by the consequences that would flow from the Fourth Circuit's alternative approach and by federal agencies' longstanding interpretation of the FDCPA.

First, if this Court adopts the Fourth Circuit's reasoning, consequences antithetical to the FDCPA's purpose would follow. Most notably, the FDCPA would no longer cover certain diversified entities—those that "regularly collect[]" debt but whose "principal purpose" is not debt collection—with respect to debt they own. That change would undermine the FDCPA's purpose because recent enforcement history shows that diversified financial institutions engage in abusive debt collection practices when they purchase and collect on defaulted loans, just as Santander did here.

The Fourth Circuit's reading, moreover, creates a blueprint for debt collectors to escape the Act's

requirements through strategic diversification and creative purchasing arrangements. Specifically, entities whose "principal purpose" is buying and collecting on defaulted debt could escape FDCPA coverage by strategically merging with non-debt-buying entities. Because the Fourth Circuit's reading exempts those who "regularly collect" debt they own, but not those whose "principal purpose" is to collect debt they own, a merger would skirt the Act. This is troubling given the misconduct of "principal purpose" debt collectors in recent years. Additionally, debt servicers that "regularly collect" defaulted debt on behalf of others could instead purchase that debt, as Santander did in this case. On the Fourth Circuit's reading, the collecting entity could escape liability by structuring transactions as debt purchases rather than as servicing assignments.

The Consumer Financial Protection Bureau ("CFPB") has received more complaints about the debt collection industry than about any other industry, and the FDCPA protects some of the nation's most vulnerable consumers against this industry's misconduct. Yet the Fourth Circuit's reading puts form over function, allowing savvy firms to opt out of FDCPA coverage. Congress did not intend so flimsy a statutory scheme.

Second, the two federal agencies charged with general administration and enforcement of the FDCPA have consistently interpreted Section 1692a(6) to include debt collectors that acquired debt in default. These agencies—the Federal Trade Commission ("FTC") and the CFPB—have substantial specialized expertise in the regulation of debt collection. And they have reiterated this interpretation across decades of enforcement actions, policy deci-

sions, and industry guidance. When Congress provides agencies with broad enforcement and rulemaking authority, the agencies' interpretations should receive considerable analytic weight in judicial interpretations of the FDCPA.

As providers of direct legal services to consumers—many of whom have faced abusive debt collection practices and benefited from the FDCPA's protections—*amici* are keenly aware of just how much the Fourth Circuit's reasoning conflicts with congressional purpose, longstanding agency practice, and common sense. The Fourth Circuit's judgment should accordingly be reversed.

ARGUMENT

I. The Fourth Circuit's Interpretation Undermines The FDCPA's Purpose By Exempting A Class Of Debt Buyers Long Understood To Be Covered By The Act And By Creating A Blueprint For Additional Debt Buyers To Evade The Act.

Congress enacted the FDCPA to eliminate widespread abusive debt collection practices. 15 U.S.C. § 1692(a), (e); *see also Barany-Snyder v. Weiner*, 539 F.3d 327, 333 (6th Cir. 2008) ("[T]he FDCPA is extraordinarily broad, crafted in response to what Congress perceived to be a widespread problem.") (internal quotation marks omitted). The need for robust protections against abusive debt collection practices remains urgent. The CFPB received over 85,200 debt collection complaints in 2015, "making debt collection the largest source of consumer complaints." *See* Consumer Fin. Prot. Bureau, *Fair Debt Collection Practices Act: CFPB Annual Report 2016*,

at 3 (Mar. 2016)[2] [hereinafter *CFPB 2016 Report*]. In the same year, the CFPB brought or resolved seventeen separate enforcement actions under the FDCPA. *Id.* at 27. The FTC brought or resolved an additional eighteen enforcement actions under the FDCPA—the highest number of actions in any single year of the agency's history. *Id.* at 38. These enforcement actions yielded $360 million in consumer relief and $79 million paid into a civil penalty fund. *Id.* at 27. In addition to these public actions, nearly 12,000 suits under the FDCPA were filed by private litigants. *Id.* at 15.

If the Fourth Circuit's interpretation is accepted, a class of debt collectors that has long been understood to fall within the Act would receive an immediate exemption from FDCPA coverage. Specifically, the Fourth Circuit's reading concerns entities that purchase debt in default that they then collect ("debt buyers"). The Fourth Circuit would exclude from FDCPA coverage debt buyers that purchase and "regularly collect" on defaulted debt, but that are not principally engaged in debt collection. Respondent seeks to soften this outcome by contending that the "worst" debt buyers are those whose "principal purpose * * * is the collection of any debts," and that they remain covered under its interpretation. *See* Br. in Opp. 5 (distinguishing "principal purpose" debt collectors from "full-service consumer-finance companies like Santander"). However, recent history shows that part-time debt buyers and "full-service

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[2] Available at http://files.consumerfinance.gov/f/201603_cfpb-fair-debt-collection-practices-act.pdf [http://perma.cc/F893-KY8Q].

consumer finance companies" engage in the same practices that animated enactment of the FDCPA.

Further, the Fourth Circuit's reading provides a blueprint for debt collectors to escape coverage. "Principal purpose" debt buyers could evade the Act by strategically diversifying into lending and servicing; some of the industry's worst players have already begun this process. Similarly, the Fourth Circuit's reading incentivizes entities that service delinquent debt to buy their way out of FDCPA regulation, as Santander did here. That is, servicers and lenders could structure servicing arrangements as "purchases," thus permitting entities to elude the constraints of the FDCPA.

The Fourth Circuit's reading would undermine the FDCPA's "broad remedial scope." *Serna v. Law Office of Joseph Onwuteaka, P.C.*, 732 F.3d 440, 445 & n.11 (5th Cir. 2013) (emphasis omitted) (collecting cases and evidence of legislative intent); *see also Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967) ("[R]emedial legislation should be construed broadly to effectuate its purposes."). This Court should reject that interpretation.

A. The Fourth Circuit's interpretation exempts from FDCPA coverage debt buyers that have consistently been held accountable for abusive collection behaviors.

Companies that purchase defaulted debt but are not principally engaged in debt collection have been held accountable for abusive collection practices in numerous public and private actions under the FDCPA. If "owed * * * another" is interpreted to re-

fer to the time of collection, however, these entities will evade regulation under the Act.

Respondents contend that, when Congress enacted the FDCPA, it only sought to regulate purchasers of defaulted debt when the purchaser's "principal purpose * * * is the collection of any debts." *See* Br. in Opp. 23. But Respondent's formulation would contravene the Act's purpose, given the many instances when "regularly collects" debt buyers engage in abusive collection behaviors despite their purported "incentives to cultivate their standing in the community." *Id.* at 5.

1. FTC and CFPB enforcement efforts shed light on the abusive debt collection practices conducted by organizations that buy defaulted debt in addition to their other commercial activities.

On the eve of the 2008 financial crisis, the FTC brought FDCPA claims against investment bank Bear Stearns and its wholly-owned subsidiary EMC Mortgage. *See* Compl. at 1-2, *Fed. Trade Comm'n v. EMC Mortg. Corp.*, No. 08-cv-338 (E.D. Tex. Sept. 9, 2008).[3] The FTC alleged that Bear Stearns and EMC bought mortgages already in default and (a) falsely represented debt amounts, (b) collected inflated debt amounts, (c) intentionally annoyed or harassed consumers through phone calls, and (d) failed to notify consumers of their baseline FDCPA rights, including their rights to verify the debt and to obtain the name of the original creditor. *Id.* at 9-12. The case ended in settlement, with Bear

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[3] Available at http://www.ftc.gov/sites/default/files/documents/cases/2008/09/080909emcmortgagecmplt.pdf [http://perma.cc/N94H-D8HQ].

Stearns and its subsidiary paying $28 million to redress aggrieved consumers. *See* Press Release, Fed. Trade Comm'n, Bear Stearns and EMC Mortgage To Pay $28 Million To Settle FTC Charges of Unlawful Mortgage Servicing and Debt Collection Practices (Sept. 9, 2008).[4]

In 2014, the United States, acting upon "notification and authorization" by the FTC, brought FDCPA claims against Consumer Portfolio Services, Inc., a major subprime auto lender that also engages in delinquent debt purchasing and collecting. Compl. at 1, 3, *United States v. Consumer Portfolio Servs., Inc.*, No. 14-cv-819 (C.D. Cal. May 28, 2014).[5] The complaint alleged that Consumer Portfolio Services attempted to collect on its defaulted loan purchases by (a) asking neighbors to place notes on consumers' doors, (b) calling consumers "liars" and claiming "the tow truck is just around the corner" when in fact repossession was neither imminent nor likely, and (c) debiting consumer accounts without authorization, which sometimes caused unnecessary bank fees. *Id.* at 8-11. The resulting $5.5 million settlement with Consumer Portfolio Services included $3.5 million of consumer account refunds and adjustments. *See* Press Release, Fed. Trade Comm'n, Auto Lender Will Pay $5.5 Million To Settle FTC Charges It Harassed

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[4] Available at http://www.ftc.gov/news-events/press-releases/2008/09/bear-stearns-and-emc-mortgage-pay-28-million-settle-ftc-charges [http://perma.cc/3RSK-4D7X]

[5] Available at http://www.ftc.gov/system/files/documents/cases/140529cpscmpt.pdf [http://perma.cc/DMX5-6K7N]

Consumers, Collected Amounts They Did Not Owe (May 29, 2014).[6]

In 2015, the CFPB issued a consent order against Discover Bank for allegedly engaging in debt collection tactics that violated the FDCPA. *See* Consent Order at 1, *Discover Bank*, CFPB No. 2015-CFPB-0016 (July 22, 2015).[7] The CFPB asserted that Discover acquired a portfolio of thousands of defaulted student loans from Citibank and, in attempting to collect on those loans, failed to provide consumers with specific information about the amount and source of their debts. *Id.* at 10-11. The consent decree required Discover to pay $18.5 million for its illegal student loan practices, including its FDCPA violations; $16 million went directly to consumer victims. *Id.* at 15, 19.

These abusive debt collection practices involved companies that, like Santander, purchase defaulted debt but are not principally engaged in debt collection. Yet the Fourth Circuit's reading would leave the FTC and the CFPB impotent to act in identical situations in the future.

2. Private actions further expose the unjustifiable part-time debt buyer exemption that the Fourth Circuit's interpretation creates. *Cf.* S. Rep. No. 95-382, at 5 (1977) (indicating Congress's intent that

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[6] Available at http://www.ftc.gov/news-events/press-releases/2014/05/auto-lender-will-pay-55-million-settle-ftc-charges-it-harassed [http://perma.cc/N22Q-Y7GF].

[7] Available at http://files.consumerfinance.gov/f/201507_cfpb_consent-order-in-the-matter-of-discover-bank-student-loan-corporation.pdf [http://perma.cc/5LZL-896N]

"consumers who have been subjected to debt collection abuses [to] enforce[e] compliance").

In *Nelson v. Santander Consumer USA, Inc.*, 931 F. Supp. 2d 919, 924 (W.D. Wis. 2013), *vacated on joint motion and stipulation*, 2013 WL 5377280 (W.D. Wis. June 7, 2013), Santander serviced Heather Nelson's defaulted auto loan before proceeding to purchase her loan. Ms. Nelson instructed Santander to communicate with her solely in writing. Yet, over a one-year period, Santander called Ms. Nelson over 1,000 times at a number she had never given Santander. Santander also left Ms. Nelson 116 prerecorded voice messages over that same period, including for ten months after Santander repossessed one of Ms. Nelson's trucks. A federal district court denied Santander's motion for summary judgment, in which Santander had contended that it was not a debt collector under the FDCPA. *Id.* at 925.

In *Goodin v. Bank of America, N.A.*, 114 F. Supp. 3d 1197, 1201-1204 (M.D. Fla. 2015), Bank of America acquired Ronald and Deborah Goodin's defaulted mortgage. Despite being informed numerous times that the Goodins' mortgage payments were being held in bankruptcy court, Bank of America repeatedly and incorrectly notified the Goodins that they were in default before then forcing them into foreclosure. Bank of America's debt collection, which caused the Goodins severe emotional distress, continued until the Goodins filed a lawsuit with FDCPA claims. The court determined that Bank of America was a debt collector. *Id.* at 1205. The court then entered a $204,000 judgment against Bank of America for FDCPA and related state statute violations. *Id.* at 1216.

In *Hoehn v. FCC Finance, LLC*, FCC Finance, a subprime home improvement lender,[8] allegedly purchased a defaulted debt and attempted to collect on that debt through "repeated harassing phone calls" to Joann Hoehn's cell phone. 126 F. Supp. 3d 472, 473 (D.N.J. 2015). Ms. Hoehn contended that she had paid the debt 13 years earlier. *Id.* The court denied FCC Finance's motion for summary judgment despite FCC Finance's argument that it did not acquire the debt "solely in order to facilitate collection for another" and therefore did not meet the requirements of Section 1692a(6). *Id.* at 476-77.

Where courts have applied the Fourth Circuit's interpretation, however, consumers have been without remedy for these abuses.

In *Schlegel v. Wells Fargo Bank, N.A.*, a case analogous to *Goodin*, Wells Fargo acquired John and Carol Schlegel's defaulted mortgage and entered into a modification agreement. 720 F.3d 1204, 1206 (9th Cir. 2013). The Schlegels alleged that Wells Fargo then repeatedly and incorrectly notified the Schlegels that they were in default and threatened to foreclose on the Schlegels' home; these actions worsened Mr. Schlegel's pre-existing PTSD. *Id.* at 1206-07. Wells Fargo continued to pursue its debt until the Schlegels filed a lawsuit with FDCPA claims, at which point Wells Fargo belatedly acknowledged its mistakes. *Id.* Wells Fargo's actions would have violated the FDCPA's prohibitions on false representations and unfair practices, *see* 15 U.S.C. §§ 1692e,

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[8] *See* FCC Fin., LLC, *About Us*, http://www.fccfinance.com/about-us [http://perma.cc/5WYW-5NN7].

1692f, but the Ninth Circuit interpreted "owed * * * another" to refer to the time of collection rather than origination and therefore determined that Wells Fargo was not a debt collector under the Act, *Schlegel*, 720 F.3d at 1210.

In *Davidson v. Capital One Bank, N.A.*, Capital One allegedly bought over $1 billion of defaulted credit card debt and then "robo-signed" "mass-produced" lawsuits seeking false debt amounts. 797 F.3d 1309, 1311-12 (11th Cir. 2015). The named plaintiff Keith Davidson alleged that, just months after buying his defaulted debt, Capital One sued him for more than twice the amount of his actual debt. *Id.* at 1311. But Capital One escaped FDCPA coverage by virtue of its diversified business structure. *See id.* at 1317 ("The amended complaint provides a basis from which we can plausibly infer that *some* part of Capital One's business is debt collection, but it fails to provide any basis from which we could plausibly infer that the 'principal purpose' of Capital One's business is debt collection.") (emphasis in original).

Like the aforementioned agency enforcement actions, these private lawsuits involve companies that purchase defaulted debt but are not principally engaged in debt collection. Consumers could not bring these claims under the Fourth Circuit's definition of debt collector.

As delinquent debt buying and collecting has evolved from a niche specialty of "principal purpose" debt buyers to a province of large companies,[9] the

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[9] For example, the country's largest purchaser of delinquent credit card debt, Sherman Financial Group LLC, is a diversified

FDCPA has assumed greater importance as the primary means to hold part-time debt buyers accountable for their abusive debt collection practices. If the phrase "owed or due another" is interpreted to refer to the time of collection, a key class of debt buyers will receive an immediate exemption from the FDCPA, frustrating Congress's goal of "eliminat[ing] abusive debt collection practices." 15 U.S.C. § 1692(e).

B. The Fourth Circuit's interpretation gives "principal purpose" debt buyers—who regularly engage in abusive practices—an incentive to evade the FDCPA through strategic diversification.

Beyond the immediate consequence of exempting a class of "regularly collects" debt buyers from the FDCPA's coverage, the Fourth Circuit's interpretation creates serious implications for "principal purpose" debt buyers as well. And even Respondents agree that "principal purpose" debt collectors merit FDCPA regulation. *See* Br. in Opp. 5.

The Fourth Circuit's reading would encourage entities whose "principal purpose" is to collect defaulted debt to restructure themselves, through strategic diversification and mergers, in order to escape FDCPA coverage. The possibility of allowing some of the most egregious FDCPA violators to insulate themselves from liability is troubling.

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global investment company. It bought over $4 billion of credit card debt in 2013 alone. *See* Nilson Report, *Top Buyers of Credit Card Debt 2013*, at 5 (May 2014), *available at* http://www.nilsonreport.com/upload/issues/1041_0002.pdf [http://perma.cc/7ZFG-KQ76].

Consider Ditech, formerly known as Green Tree, a mortgage servicer that paid $63 million to settle an enforcement action brought by the FTC and the CFPB. The agencies' complaint alleged an extensive list of FDCPA violations:

- Obscenities, yelling, and harassing and abusive language such as "get a real job" and "you should leave your husband if he can't provide for you";
- Repeated phone calls and voicemails—between seven and twenty per day for weeks—including early in the morning and late at night, at home and at work;
- Unlawful threats to have debtors arrested or imprisoned, or to garnish wages or foreclose on property;
- Unlawful disclosures of debts to employers, coworkers, neighbors, friends, and family, plus requests that these third parties assist the homeowner in making payments; and
- Unapproved debits from homeowners' bank accounts.

Compl. at 14-17, *Fed. Trade Comm'n v. Green Tree Servicing LLC*, No. 0:15-cv-02064 (D. Minn. Apr. 21, 2015)[10] [hereinafter *Green Tree* Compl.]. Green Tree accepted, and the district court adopted, a settlement for $63 million and injunctive relief. *See* Stipulated

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10 Available at https://www.ftc.gov/system/files/documents/cases/150421greentreecomplaint.pdf [https://perma.cc/3WMB-LGD7].

Order for Permanent Inj. and Monetary J., *Green Tree Servicing* (D. Minn. Apr. 23, 2015).[11]

About four months later, Green Tree shed its name, merging with Ditech Mortgage Corp. and adopting the name "ditech, a Walter company." HousingWire, *Green Tree Gone; Ditech Merger Complete* (Sept. 2, 2014).[12] Both companies were already owned by the same parent; the merger was seen as a strategic effort at rebranding, even by industry publications. *See id.* ("By divesting itself of the Green Tree name, Walter Investment leaves behind Green Tree's legacy, which included a $63 million fine * * * .").

"Principal purpose" debt collectors already use corporate restructuring to confuse consumers and to evade regulation and liability. And some entities have already begun restructuring specifically to evade the FDCPA. For example, in *Federal Trade Commission v. Check Investors, Inc.*, the defendant entity was created by a legally trained fraudster who "theorized that if a debt collection business collected only debts it actually owned based on purchasing NSF checks, it would not be subject to the FDCPA, and would therefore be free to use collection techniques prohibited by the FDCPA such as harassment and deception." 502 F.3d 159, 162-63 (3d Cir. 2007).

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[11] Available at http://www.ftc.gov/system/files/documents/cases/150421greentreestiporder.pdf [http://perma.cc/VDJ3-8TSV].

[12] Available at http://www.housingwire.com/articles/34970-green-tree-gone-ditech-merger-complete [http://perma.cc/T9P9-A57E].

Other companies would likely follow suit if this Court adopted the Fourth Circuit's interpretation. For instance, Walter Investment, Green Tree's parent, had maintained a debt collecting arm and a mortgage servicing arm; the Fourth Circuit's approach would allow the parent to immunize itself from liability merely by merging the two, as it did to drop the Green Tree name. If companies like Green Tree will effect a merger to rehabilitate their reputations, they would likely do so to escape FDCPA regulation altogether.

Similarly, other companies have made aggressive use of the corporate form to confuse consumers and escape liability. *See, e.g.*, Mem. in Support of Pl.'s *Ex Parte* Appl. for TRO, *Fed. Trade Comm'n v. Asset & Capital Mgmt. Grp.*, No. 13-cv-5267 (C.D. Cal. July 23, 2013)[13] (accusing a "principal purpose" debt buyer of spreading into a tentacular set of subsidiaries and using those subsidiaries to commit blatant FDCPA violations, including impersonating process servicers and impermissibly threatening to have consumers arrested); Press Release, Fed. Trade Comm'n, FTC Returns Almost $4 Million to Consumers in Debt Collection Scam (June 30, 2015).[14] This Court should not provide incentives, and Congress did not intend to provide incentives, for corporate restructuring that avoids the FDCPA.

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[13] Available at http://www.ftc.gov/sites/default/files/documents/cases/2013/08/130801acmgmemo.pdf [http://perma.cc/SU75-E7BE].

[14] Available at http://www.ftc.gov/news-events/press-releases/2015/06/ftc-returns-almost-4-million-consumers-debt-collection-scam [http://perma.cc/BSK4-FZD7].

If this Court affirms the Fourth Circuit's reading, then a "principal purpose" debt buyer could escape liability for misconduct related to its defaulted debt merely by merging with a non-debt-buying entity to form a larger entity whose "principal purpose" is not debt collection. Since the Fourth Circuit's reading excludes companies that "regularly collect[]" debt that they purchased after default—though not those whose "principal purpose" is collecting such debt—such mergers would evade the FDCPA.

If "principal purpose" debt collectors can so readily escape liability under the FDCPA, the statute will be undermined. For example, in an enforcement action against the nation's two largest debt buyers, who held the rights to collect more than $200 billion in defaulted consumer debt, the CFPB found a welter of violations that resulted in $61 million in refunds, $18 million in civil penalties, and injunctions against several unlawful practices, including the collection of $128 million of bad debt. The debt buyers' misconduct included, among other things, the following FDCPA violations:

- "[a]ttempts to collect on unsubstantiated or inaccurate debt";
- deceptive, robo-signed court filings;
- suits filed without any intention to prove the underlying debt, on the assumption that defendants would not appear in court to contest the debt;
- "thousands of letters offering a limited-time opportunity to 'settle' without revealing that the [statute of limitations had passed]"; and

- harassing phone calls, including "thousands of calls to consumers before 8 a.m. or after 9 p.m." and hundreds of incidents in which a consumer was called more than twenty times in two days.

Press Release, Consumer Fin. Prot. Bureau, CFPB Takes Action Against the Two Largest Debt Buyers for Using Deceptive Tactics to Collect Bad Debts (Sept. 9, 2015);[15] *see also Magee v. Portfolio Recovery Assocs., LLC*, No. 12-CV-1624, 2016 WL 2644763, at *4 (N.D. Ill. May 9, 2016), *reconsideration denied*, 2016 WL 4765682 (N.D. Ill. Sept. 13, 2016) (granting summary judgment for plaintiffs in an FDCPA class action against one of the same debt buyers and finding that debt buyer deceptively implied that debts were not time-barred and were still subject to credit reporting).

If "principal purpose" debt collectors can evade liability for such acts through merger or diversification, it will tear a wide hole in the fabric of the Act, one inconsistent with Congress's broad remedial intent. *See* S. Rep. No. 95-382, at 1 (1977) ("[The Act's] purpose is to protect consumers from a host of unfair, harassing, and deceptive debt collection practices * * * .").

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[15] Available at http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-the-two-largest-debt-buyers-for-using-deceptive-tactics-to-collect-bad-debts [http://perma.cc/5UQZ-FTAZ].

C. The Fourth Circuit's interpretation also provides incentives to debt servicers to evade FDCPA coverage by purchasing the debt they service, as Santander did here.

In addition to giving "principal purpose" debt collectors incentives to restructure their business to escape FDCPA coverage, the Fourth Circuit's reading encourages debt *servicers* to evade FDCPA coverage by purchasing the delinquent debt they service.

All parties agree that the FDCPA covers debt servicers that acquire defaulted loans for servicing, but do not own the loans. *See Bridge v. Ocwen Fed. Bank, FSB*, 681 F.3d 355, 359 (6th Cir. 2012) ("a loan servicer * * * can either stand in the shoes of a creditor or become a debt collector, depending on whether the debt was assigned for servicing before the default or alleged default occurred"); *cf.* Br. in Opp. 29 ("For servicing companies, which occupy a gray area between creditors and debt collectors, the distinction turns on the default status of debt at the time of acquisition."). Though the same principle should logically extend to an entity that *purchases* a defaulted loan, the Fourth Circuit disagreed. Its conclusion is puzzling. Nothing relevant about Santander Consumer USA and Petitioners' relationship changed by dint of Santander being an owner of defaulted debt rather than a servicer of defaulted debt. If anything, Santander's incentive to engage in abusive debt collection practices may have increased after it purchased Petitioners' loan, since Santander could keep the profits of its debt collection and had no continuing relationship with Petitioners' original creditor.

The Fourth Circuit's reading of the Act thus sets a troubling precedent. Since servicing arrange-

ments can be structured as purchases, an entity would be allowed to use debt collection practices prohibited by the FDCPA—so long as the entity's "principal purpose" is not debt collection. Given the enforcement actions brought against loan servicers who acquired servicing rights to defaulted debt, it seems inconsistent with Congressional intent and with common sense that these same servicers could evade FDCPA coverage by purchasing their delinquent debt portfolio. *See, e.g.*, *Green Tree* Compl., *supra*, at 27-34 (finding that a loan servicer, in connection with loans acquired after default, engaged in abusive debt collection practices); Compl. at 9-11, *Fed. Trade Comm'n v. Fairbanks Capital Corp.*, No. 0:03-cv-12219 (D. Mass. Nov. 12, 2003) (same); Second Am. Compl. at 20-21, *Fed. Trade Comm'n v. Capital City Mortg. Corp.*, No. 1:98-cv-237 (D.D.C. Apr. 17, 2002) (same). Because these debt servicers could escape FDCPA coverage under the Fourth Circuit's reading by structuring transactions as purchases rather than servicing arrangements, the requirements of the FDCPA would become an optional regime for those who purchase and then "regularly collect[]" defaulted debt.

As illustrated by governmental and private enforcement of the FDCPA, the detrimental consequences of the Fourth Circuit's reading are alien to a statute designed "to *eliminate* abusive debt collection practices." 15 U.S.C. § 1692(e) (emphasis added).

II. The Federal Government Has Long Interpreted The FDCPA To Apply To Purchasers Of Defaulted Debt.

The two agencies charged with general administration and enforcement of the FDCPA have uni-

formly interpreted 15 U.S.C. § 1692a(6) to include debt collectors that purchased debt in default. When statutory language is ambiguous, as here, *see* Pet'rs' Br. 19, 28-29, the interpretive decisions of agencies responsible for administering a statutory scheme properly "influence courts facing questions the agencies have already answered." *United States v. Mead Corp.*, 533 U.S. 218, 227-28 (2001). The FTC and the CFPB possess authority to administer and enforce the FDCPA's protections: the agencies share general enforcement responsibilities, *see* 15 U.S.C. § 1692*l*(a), (b)(6), while the CFPB is also authorized to engage in rulemaking, *see id.* § 1692*l*(d). Annual agency reports to Congress "concerning the administration" of the FDCPA are also required. *Id.* § 1692m(a). The FTC and the CFPB's consistent, reasoned application of the FDCPA provides their interpretations "considerable" weight. *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

The FTC and the CFPB's interpretations are thoroughly considered, well-reasoned, and consistent—and therefore persuasive under *Skidmore*'s multifactor test. *See Mead Corp.*, 533 U.S. at 228-29. Accordingly, courts have regularly afforded substantial deference to the agencies' interpretations of the Act. *See, e.g., Buchanan v. Northland Grp., Inc.*, 776 F.3d 393, 398 (6th Cir. 2015); *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010, 1015, 1020 (7th Cir. 2014); *Ocwen*, 681 F.3d at 361; *see also Fed. Trade Comm'n v. Colgate-Palmolive Co.*, 380 U.S. 374, 385 (1965) (noting that the FTC, "as an administrative agency which deals continually with cases in this area, * * * is often in a better position than are courts" to construe the statutes it enforces). Regardless of whether agency interpretations are the product of rulemaking, the degree of deference under *Skidmore*

turns on "[1] the thoroughness evident in [the agency's] consideration, [2] the validity of its reasoning, [3] its consistency with earlier and later pronouncements, and [4] all those factors that give it the power to persuade." *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2169 (2012) (quoting *Skidmore*, 323 U.S. at 140) (internal quotation marks omitted). Moreover, the factors can be mutually reinforcing—for example, a consistent interpretation is more likely to reflect thorough consideration. *See Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 15-16 (2011). Together, the four *Skidmore* factors recommend placing significant weight on the agencies' interpretations of Section 1692a.

The expertise and deliberation that support application of *Skidmore* deference to the agencies' consistent position also approach the showing necessary to apply the level of deference formulated in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). This Court has held a "long standing" interpretation reached "through means less formal than 'notice and comment' rulemaking" can support *Chevron* deference. *Barnhart v. Walton*, 535 U.S. 212, 221 (2002); *see also NationsBank of N.C., N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251, 259 (1995) (applying *Chevron* deference to a series of letters issued by the Comptroller of the Currency). Rather than the formality of the agency's process, *Chevron*'s applicability depends on "the interstitial nature of the legal question, the related expertise of the [a]gency, the importance of the question to administration of the statute, the complexity of that administration, and the careful consideration the [a]gency has given the question over a long period of time." *Barnhart*, 535 U.S. at 222. Here, the agencies' interpretation, reit-

erated over almost thirty years in guidance, study, preliminary rulemaking, and enforcement, supports potential application of *Chevron*—and at the least particularly strong deference under *Skidmore*.

1. The FTC and the CFPB's understanding that purchasers of defaulted debt are debt collectors reflects thorough consideration; the significant depth and breadth of the agencies' assessment counsel giving their interpretation considerable weight. *See Mead Corp.*, 533 U.S. at 228. "[C]areful consideration" may be inferred from "the length of time the agencies" have maintained their views. *Kasten*, 563 U.S. at 15-16. The FTC established its interpretation through guidance documents and multiyear study, while the CFPB has proceeded through official reports and a rule that interprets language identical to the statute. Both agencies have engaged in thorough consideration of statutory structure, industry practice, and judicial precedent.

The FTC's interpretation that Section 1692a(6) covers entities that "regularly collect[]" debt purchased in default dates back to a Staff Opinion Letter issued in 1988. *See* Fed. Trade Comm'n, Staff Opinion Letter, Fair Debt Collection Practices Act (Nov. 22, 1988), 1988 WL 1098780 [hereinafter FTC Staff Opinion Letter]. In this Letter, the FTC responded to an inquiry about whether "a check guarantee service * * * would be considered a debt collector under the Act in a situation where it purchases consumers' dishonored or NSF checks from merchants [for collection]." *Id.* at *1. The FTC replied that, yes, the FDCPA "applies to a corporation collecting its own debts if that corporation regularly collects debts * * * that were 'already in default when they were assigned to the corporation.'" *Id.* at *2

(quoting *Kimber v. Fed. Fin. Corp.*, 668 F. Supp. 1480, 1486 (M.D. Ala. 1987)). The FTC adopted *Kimber*'s interpretation that subsections 1692a(4) and (6) interact to exclude from the FDCPA's scope only those who collect debts that originally belonged to themselves. *Id.* at *1 (citing *Kimber*, 668 F. Supp. at 1485). The FTC has maintained this understanding in more recent agency guidance. *See, e.g.*, Christopher Koegel, Assistant Dir. of Div. of Fin. Practices, Fed. Trade Comm'n, *Think Your Company's Not Covered by the FDCPA? You May Want To Think Again* (Dec. 8, 2015).[16]

The FTC has also reiterated this understanding of Section 1692a(6) through consistent enforcement of the FDCPA and study of the debt collection industry. The Commission issued a report on recent changes in the industry after a two-day workshop in October 2007 that "solicited public comments on a number of topics" related to debt collection. Fed. Trade Comm'n, *Collecting Consumer Debts: The Challenges of Change* 1, 5, 13 (Feb. 2009)[17] (finding that debt buyers' explosive growth represents "[t]he most significant change in the debt industry in recent years") [hereinafter *FTC 2009 Study*]. The FTC has continued to examine its regulation of the debt buying industry, issuing subsequent reports after public roundtables in 2009 and a later intensive

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[16] Available at http://www.ftc.gov/news-events/blogs/business-blog/2015/12/think-your-companys-not-covered-fdcpa-you-may-want-think [http://perma.cc/8UBQ-VPYU].

[17] Available at http://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf [http://perma.cc/Lf7F-2P3G].

study of industry data. *See* Fed. Trade Comm'n, *The Structure and Practices of the Debt Buying Industry* 1-2 (Jan. 2013)[18] (examining "a massive amount of information related to debt buying") [hereinafter *FTC 2013 Study*]; Fed. Trade Comm'n, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* 1 (July 2010) [hereinafter *FTC 2010 Study*].[19]

The public participation in two of these reports increases their resemblance to "notice-and-comment rulemaking," the paradigmatic recipient of judicial deference. *See Mead Corp.*, 533 U.S. at 230. In the two later reports, the FTC reaffirmed its understanding that "debt buyers that seek to recover on debts that were in default when the debt buyers acquired them are debt collectors for purposes of the FDCPA." *FTC 2013 Study*, *supra*, at 3-4; *accord FTC 2010 Study*, *supra*, at 6 n.15. These reports, produced in light of extensive enforcement experience and in response to public comment and industry data, establish the Commission's considered opinion that the FDCPA covers entities like Santander Consumer USA.

The CFPB reached the same conclusion about this language's meaning during rulemaking. *See*

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[18] Available at http://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf [http://perma.cc/S6KQ-D5GF].

[19] Available at https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf [http://perma.cc/X5LY-J9TA].

Mead Corp., 533 U.S. at 230 (explaining that "notice-and-comment rulemaking" is more likely to yield interpretations reflecting "fairness and deliberation"). Although the CFPB has not directly interpreted Section 1692a by final rule,[20] the Bureau codified a definition of "debt collector" that verbatim copies the portions of Section 1692a(6) relevant to this case. *Compare* 12 C.F.R. § 1090.105, *with* 15 U.S.C. § 1692a(6).

The CFPB interpreted 12 C.F.R. § 1090.105 to "generally include[] third-party debt collectors, debt buyers, and collection attorneys." Defining Larger Participants of the Consumer Debt Collection Market, 77 Fed. Reg. 65,775, 65,778 (Oct. 31, 2012) [hereinafter CFPB Final Rule]. As Congress did in drafting the FDCPA, the CFPB reached this conclusion by citing differences between the credit and defaulted-debt markets to distinguish debt buyers from originating creditors. *Compare id.* at 65,783 ("By contrast [with creditors], neither third-party debt collectors nor debt buyers have originated the debts they collect or have ongoing business relationships with the consumers from whom they collect debts."), *with* S.

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[20] The CFPB has interpreted the FDCPA in proposed rulemaking to cover entities that "regularly collect[]" debt purchased in default. *See* Debt Collection (Regulation F): Advanced Notice of Proposed Rulemaking, 78 Fed. Reg. 67,848, 67,851 (proposed Nov. 12, 2013); Consumer Fin. Prot. Bureau, *Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered* 1 (July 28, 2016), *available at* http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf [http://perma.cc/968E-7NGQ].

Rep. 95-382, at 2 (1977) ("Unlike creditors, who generally are constrained by the desire to protect their goodwill when collecting past due accounts, independent collectors are likely to have no future contact with the consumer * * * ."). The CFPB's reasoned interpretation of its definition of "debt collector"—using the FDCPA's exact language—further supports Petitioners' position.

The FTC and the CFPB have reached and maintained their interpretation of "debt collector" by varying routes, each of which involved intensive consideration of the FDCPA. The FTC developed its interpretation over decades of enforcement actions and judicial decisions, as well as studies employing an analog of the notice-and-comment process. The CFPB's interpretation has reiterated the FTC's longstanding understanding in rulemaking proceedings. Together, the FTC and the CFPB's interpretation is informed by active engagement in enforcement actions, research and investigation, and collection of public input. These processes reflect the thorough consideration deserving of significant deference under *Skidmore*. *See Bragdon v. Abbott*, 524 U.S. 624, 642 (1998) (noting general judicial deference to agencies' accumulated "body of experience and informed judgment") (quoting *Skidmore*, 323 U.S. at 139-40).

2. The FTC and the CFPB's construction reflects "valid reasoning" because it comports with the FDCPA's structure and purpose. *See Fed. Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 38, 40-41 (1981) (assessing the agency's "validity of reasoning" based on the interpretation's "logical consistency" and alignment with the act's "discernible purpose" and "general scheme"). The

FTC's understanding borrows from judicial reasoning that the FDCPA covers acquirers of defaulted debt. *See FTC 2013 Study*, *supra*, at 3-4 & n.13 (recounting the textual, structural, and purposive analysis employed in the "seminal decision" of *Kimber*, 668 F. Supp. at 1486); *see also* Amicus Brief of the Fed. Trade Comm'n Supporting Rehearing En Banc at 6, *Davidson v. Capital One Bank (USA), N.A.*, 797 F.3d 1309 (11th Cir. 2015), 2015 WL 5608572 (noting that "[a]ll courts of appeal that have previously addressed this question" have concurred with the FTC's interpretation) [hereinafter FTC Amicus Brief].

The CFPB's interpretation similarly accords with decisions distinguishing debt collectors from creditors based on whether the debt was in default when purchased. *Compare* CFPB Final Rule, *supra*, at 65,783 (reasoning that debt buyers' relationship with defaulted consumers is identical to that of third-party debt collectors), *with Schlosser v. Fairbanks Capital Corp.*, 323 F.3d 534, 538 (7th Cir. 2003) (noting that the FDCPA's distinction between debt collectors and creditors turns on "whether the activity directed at the consumer will be servicing or collection"). The agencies' interpretations of Section 1692a thus build on their administrative and enforcement decisions as well as decades of FDCPA litigation.

The agencies' reasoning is further supported by the FTC's recent "massive" study of debt buying. *FTC 2013 Study*, *supra*, at 2. Three key findings in that study reinforce the FTC's (and the CFPB's) conclusion that the FDCPA covers entities that "regularly collect[]" debt purchased in default.

First, the FTC found that debt buying has increased in recent years as a result of changing indus-

try pressures. For example, federal banking regulations have encouraged the sale of defaulted debt by requiring that depository institutions "charge off," or write down, debt after a certain period of nonpayment. *See FTC 2013 Study*, *supra*, at 13 & n.58 (citing Uniform Retail Credit Classification and Account Management Policy, 65 Fed. Reg. 36,903 (June 12, 2000)). These regulatory requirements have given incentives to originating creditors to sell debt that they might have previously left with servicers or third-party collectors in order to recover at least some economic return before the "charge-off" deadline. *Id.* This result enhances debt buyers' prevalence within the industry regulated by the FDCPA.

Second, the FTC found that, to protect their reputations, creditors may hire third-party debt collectors rather than sell defaulted debt because they will have "greater control over how debt collectors interact with consumers." *Id.* at 12. Accordingly, debt buyers are less likely than contracted collectors to be constrained by the original creditors' reputational concerns.

Third, debt buyers may be the entities most likely to engage in the collection practices proscribed by the FDCPA. The time lags and informational gaps created by multiple rounds of debt buying exacerbate the abusive behaviors that the Act was designed to prevent. *Id.* at 29-30, 45-46. For example, the FTC found that 30% of resold defaulted debt was older than six years when most states' applicable statutes of limitations "are between three and six years." *Id.* at 42-43. Also, "debt sellers typically do not provide dispute history information to buyers at the time of sale." *Id.* at 37. These practices lead to harassment of persons who have no legal obligation to pay.

The FTC's findings provide ample support for its interpretation that the FDCPA covers part-time debt buyers. The CFPB has raised similar concerns about the integrity of debt buyers' consumer information and collection efforts in its reports to Congress. *See, e.g.*, *CFPB 2016 Report*, *supra*, at 10-11. The agencies' reasoned and coherent interpretation of Section 1692a, in light of industry information, public input, and enforcement actions, recommends deference to this reading.

3. The agencies' understanding of the FDCPA's scope has remained unchanged. Agency views are more persuasive under *Skidmore* when they have been consistently asserted over time. *See Kasten*, 563 U.S. at 15-16; *Barnhart*, 535 U.S. at 221-22. A "consistent" interpretation may cover a period as short as five years. *See Fed. Exp. Corp. v. Holowecki*, 552 U.S. 389, 399 (2008). The combined consistency of the FTC and CFPB's interpretation, dating back far more than five years, enhances the weight afforded their position.

As previously noted, the FTC has maintained its broad interpretation of Section 1692a(6) in a variety of public agency actions dating back at least to 1988. *See* FTC Staff Opinion Letter, *supra*. The FTC's unbroken chain of agency guidance has been accompanied by numerous enforcement actions predicated on the FTC's interpretive position. *See* FTC Amicus Brief, *supra*, at 14 & n.4 (collecting four enforcement actions against "loan purchasers" initiated between 1998 and 2015); *FTC 2013 Study*, *supra*, at 10 n.45 (collecting five actions against debt buyers brought between 2004 and 2012). The FTC has continued to rely on this reading to enforce the FDCPA against debt buyers that engage in abusive collection

practices. The Commission recently argued that the reading of Section 1692a in *Davidson*—on which the Fourth Circuit relied, *see* Pet App. 11a, 18a—would frustrate future enforcement efforts. FTC Amicus Brief, *supra*, at 14 (predicting that *Davidson*'s interpretation would disallow large-scale enforcement actions against abusive debt buyers and provide these entities a simple "roadmap for avoiding the strictures of the FDCPA"). Upending the FTC's nearly thirty-year understanding of the FDCPA would reshape and limit future enforcement efforts and disregard the agency's accumulated experience and expertise.

Although the CFPB only commenced operation in July 2011, it has maintained the same interpretation of Section 1692a that was included in its first annual report to Congress. *See* Consumer Fin. Prot. Bureau, *Fair Debt Collection Practice Act: CFPB Annual Report 2012*, at 7 n.11 (Mar. 2012)[21] ("'Third-party debt collectors' include contingency fee collectors and attorneys who regularly collect or attempt to collect, directly or indirectly, debts asserted to be owed or due another, as well as debt buyers collecting on debts they purchased in default."). The consistency of the FTC and now the CFPB's interpretations is critical to their successful protection of consumers' rights even as the debt collection industry has undergone transformative change since 1977.

Additionally, Congress's failure to revise Section 1692a(6) despite revisiting the FDCPA after the FTC established its interpretation in 1988 buttresses

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[21] Available at http://files.consumerfinance.gov/f/201203_cfpb_FDCPA_annual_report.pdf [http://perma.cc/LLK7-2G9G].

the agency's consistent position. *See Barnhart*, 535 U.S. at 220 (noting that congressional amendments failing to change relevant statutory language "provide further evidence * * * that Congress * * * intended the agency's interpretation, or at least understood the interpretation as statutorily permissible"). In enacting the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), Congress deliberately expanded federal enforcement of the FDCPA's protections. *See id.* § 1089, 124 Stat. at 2092-93 (codified at 15 U.S.C. § 1692*l*); *see also* S. Rep. No. 111-176, at 19-20 (2010) (discussing, in a report accompanying draft FDCPA amendments that were subsequently enacted, the FTC's examination and policing of abusive debt collection practices as reported in the *FTC 2009 Study*, *supra*).

Moreover, Congress was advised during consideration of the Dodd-Frank Act that the FDCPA already covered debt buyers. *See* U.S. Gov't Accountability Off., GAO-09-748, *Credit Cards: Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Market and Use of Technology* 8 (Sept. 2009) [hereinafter GAO 09-748 Report]. Congress's retention of Section 1692a during the Dodd-Frank Act's sweeping overhaul of federal consumer protection laws, *see* S. Rep. No. 111-176, at 23 (noting "the urgent need for better consumer protections" and recognizing that "the federal government has not done enough to address these issues"), provides further support that the FTC's consistent position is "statutorily permissible" and deserving of deference.

4. Finally, the FTC and the CFPB's authority and expertise are important components in assessing

their interpretation's "power to persuade." *Mead Corp.*, 533 U.S. at 228-29 (quoting *Skidmore*, 323 U.S. at 140). The FTC and the CFPB possess "relative expertness" about the structure of the debt collection industry. *Id.* at 230. The FDCPA, as revised by the Dodd-Frank Act, contemplates that agencies will collaboratively exercise their joint expertise in crafting policy. *See* 15 U.S.C. § 1692m(b). This centralized, deliberative, and collaborative administration of the FDCPA is a far cry from 10,000 customs classifications "churned out" by "46 scattered offices." *Mead Corp.*, 533 U.S. at 233. Here, by contrast, the FTC's longstanding experience enforcing the Act and the CFPB's overarching authority to regulate "consumer financial products and services," 12 U.S.C. § 5491(a), including under the FDCPA, *see* 15 U.S.C. § 1692*l*(d), provide these agencies' broad authority over the debt collection industry.

In addition to enforcement, data collection, rulemaking, and guidance, these agencies regularly collect, review, and respond to thousands of consumer complaints regarding the debt collection industry. *See FTC 2013 Study*, *supra*, at 50 (reporting that the FTC "has continued to receive a high level of complaints regarding debt collectors, more than for any other industry"); *accord CFPB 2016 Report*, *supra*, at 18. The agencies' "expertness," honed over decades of policing the FDCPA's consumer protections and monitoring the quickly changing and diverse debt collection industry, is deserving of deference.

Although the FTC and the CFPB are the most authoritative interpreters of the FDCPA in the executive branch, other governmental agencies have adopted the same conception of the FDCPA's coverage. *See* Off. of the Comptroller of the Currency,

OCC Bull. 2014-37, *Consumer Debt Sales: Risk Management Guidance* (Aug. 4, 2014)[22] ("Under the FDCPA, 'debt collector' is defined broadly to generally encompass debt buyers working on behalf of original creditors, including banks."); GAO-09-748 Report, *supra*, at 8. Additionally, a leading trade association for debt buyers has adopted the same reading of Section 1692a(6) as the FTC and the CFPB. *See* David Reid, Dir. of Gov't Affairs & Policy, Debt Buyers' Ass'n Int'l, *The Debt Buying Industry* 4 (Apr. 2015)[23] ("[I]f a debt buyer purchases nonperforming consumer accounts, the FDCPA would apply."). The expertise and experience that have led other agencies and industry groups to follow the CFPB and the FTC's reasoning recommend placing significant weight on the agencies' interpretation.

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The Fourth Circuit's interpretation of Section 1692a exempts from the FDCPA's longstanding regulation debt buying entities that acquire and collect billions of dollars of defaulted debt every year. The Fourth Circuit's problematic distinction between "principal purpose" and "regularly collects" debt buyers provides an unintended windfall for sophisticated debt collectors at American consumers' expense. Instead, consistent with the Act's purpose and the interpretation that the FTC and the CFPB have main-

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[22] Available at http://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-37.html [http://perma.cc/K35S-5MNN].

[23] Available at http://www.dbainternational.org/wp-content/uploads/DBA_White_Paper_The_Debt_Buying_Industry.pdf [http://perma.cc/CH6T-HHL2].

tained across decades of agency action, the FDCPA should be applied broadly to prevent abusive conduct by debt collectors that regularly acquire defaulted debt.

CONCLUSION

The judgment of the United States Court of Appeals for the Fourth Circuit should be reversed.

Respectfully submitted.

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* An *amicus* brief filed by a clinic affiliated with Yale Law School does not represent any institutional views of Yale Law School or Yale University.